

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

**PUERTO RICO TELEPHONE
COMPANY, INC.,**

Plaintiff,

v.

**TELECOMMUNICATIONS
REGULATORY BOARD OF PUERTO
RICO, et al,**

Defendants.

Civil No. 12-1683 (GAG)

OPINION AND ORDER

On August 6, 2012, the Puerto Rico Telephone Company, Inc. (“Plaintiff” or “PRTC”) submitted an appeal to the Puerto Rico Court of Appeals, Judicial Region of San Juan, contesting a decision rendered by the Telecommunications Regulatory Board of Puerto Rico (“Board”). (See Docket 1-1.) The Board’s decision concerned interpretation of the terms of an arbitration agreement, into which Plaintiff and WorldNet, Inc. (“WorldNet”) entered to resolve disputes over an interconnection agreement (“ICA”) (discussed herein). In the present appeal, Plaintiff named the Board and WorldNet (collectively “Defendants”). (Id.) The Board removed the case to federal court on August 21, 2012 pursuant to 28 U.S.C. § 1441. Presently before the court is Plaintiff’s Motion to Remand the case to the Puerto Rico Court of Appeals. (Docket No. 16.) After considering the parties’ submissions, motions, replies, and attachments thereto, the court **DENIES** Plaintiff’s Motion to Remand.

I. Background

The Federal Telecommunications Act of 1996 (“TCA”) facilitates entry into local telecommunications markets by competitive local exchange carriers (“CLECs”) through the resale or leasing of certain facilities of incumbent local exchange carriers (“ILECs”). See 47 U.S.C. §§ 251-252. WorldNet is a CLEC and PRTC is an ILEC. The TCA also requires ILECs to negotiate the terms of ICAs with CLECs in good faith. See 47 U.S.C. § 251(c)(1). “These agreements provide the terms of interconnection and ‘fulfill the duties’ enumerated in § 251.” See Global NAPs,

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1 Inc. v. Verizon New England, Inc., 444 F.3d 59, 61-62 (1st Cir. 2006). The TCA imposes on CLECs
2 and ILECs the duty to provide a direct or indirect interconnection with other telecommunications
3 exchange carriers for transmitting and routing telecommunications services. The TCA also grants
4 the right to petition relevant state commissions to resolve issues according to governing FCC-
5 promulgated regulations. (Id. at 61.)

6 On November 10, 2010, PRTC and WorldNet signed an ICA. Disagreement arose over
7 whether the ICA dictated that arbitration would resolve disputes concerning liquidated damages.
8 (Docket No. 20 at 3.) The parties have thoroughly engaged the arbitration and administrative review
9 processes and inundated the court with a plethora of filings arising from this set of facts. See Civil
10 Case Nos. 11-2263 (JAG), 11-1152 (JAG), and 11-1202 (JAG). The instant claim comes to the
11 court from the Puerto Rico Court of Appeals. PRTC appeals a denial of its request for declaratory
12 judgment, which it presented to the Board on May 29, 2012, and which the Board denied on July 6,
13 2012. (See Docket 1-1 at 2.) PRTC “requested that the Board decide whether or not WorldNet had
14 the option to file an arbitration case with the AAA in the event of claims for liquidated damages”
15 under the ICA, when the Board “excluded *sua sponte* that option of the ICA, understanding that
16 submitting claims for liquidated damages to an AAA arbitrator could harm the Board’s own public
17 policy . . .” (Id.)

18 PRTC specifically alleges the Board erred by: “(1) arbitrarily and capriciously deciding that
19 Section 29 of the ICA . . . can be used to arbitrate” controversies regarding liquidated damages
20 before the AAA; “(2) incorrectly applying the doctrine of the case law to allow the request for a
21 declaratory judgment from PRTC,” and; (3) deciding that the request for a declaratory judgment
22 from PRTC was a late request for reconsideration . . .” (Id. at iii.) The Board removed the appeal
23 to federal court on August 21, 2012.

II. Discussion

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25 Plaintiff contends remand is appropriate because: (1) the Board is not a defendant for
26 purposes of 28 U.S.C. § 1441; (2) WorldNet neglected to timely consent to removal; (3) WorldNet
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1 failed to timely file certified English translations of Spanish-language documents, and (4) the court
 2 lacks subject matter jurisdiction over the matter. The court addresses each allegation in turn.

3 1. The Board is a Defendant with Standing Under 28 U.S.C. § 1441

4 Plaintiff first contends that the Board is not a “defendant” under 28 U.S.C. § 1441. The
 5 removal statute reads, in pertinent part, “[A]ny civil action brought in a State court of which the
 6 district courts of the United States have original jurisdiction, may be removed by the defendant or
 7 the defendants, to the district court of the United States for the district and division embracing the
 8 place where such action is pending.” The statute clearly bestows on defendants the right to remove
 9 civil actions over which the United States has original jurisdiction.

10 Plaintiff claims the Board lacks standing because it is not a party to the original dispute
 11 arising under the Board’s ICA interpretation. (Docket No. 16 at 6-7.) However, Plaintiff, the master
 12 of his complaint, specifically names the Board as a defendant in its appeal to the Puerto Rico Court
 13 of Appeals. (Docket No. 1-1.) The first page of the appeal labels the Board as a “defending party.”
 14 (*Id.*) Without seeking leave to amend, Plaintiff cannot defeat the Board’s status as a “defendant.”
 15 See Lincoln Prop. Co. v. Roche, 546 U.S. 81, 91 (2005) (citing 16 J. Moore et al., Moore’s Federal
 16 Practice § 107.14[2][c], 107-67 (3d ed. 2005) (“In general, the plaintiff is the master of the
 17 complaint and has the option of naming only those parties the plaintiff chooses to sue . . .”).

18 2. WorldNet Timely Consented to Removal

19 Parties must consent to removal within thirty days of receipt of service. 28 U.S.C. §
 20 1446(b)(2)(B). PRTC asserts WorldNet’s thirty day period elapsed on September 5, 2012. (Docket
 21 No. 16 at 8-9.) The Board’s notice of removal, submitted on August 21, 2012, states, “All
 22 defendants to the Civil Action consent to this Removal.” (Docket No. 1 at ¶ 7.) WorldNet
 23 submitted a motion for extension of time until thirty days after the order to file an “answer and to
 24 establish a briefing schedule.” (Docket No. 11.) The order requests time to “answer in this removed
 25 action,” and abounds with indicia of consent to proceed before this court, such as requesting the
 26 court to adopt previously used procedures for adjudicating the present issue. (*Id.*) Furthermore,

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1 First Circuit held that Section 252(e)(6) grants jurisdiction for approvals or rejections of
2 interconnection agreements, but that the commission's determinations require a sufficient nexus to
3 the ICAs to sustain jurisdiction under 252(e)(6). Id. at 9-10. In establishing the test, the First Circuit
4 carved out from the adequate nexus requirement a prohibition on jurisdiction for claims exclusively
5 alleging failure to comply with state law provisions. Id. at 10.

6 The appeal contends the Board erred by: "(1) arbitrarily and capriciously deciding that
7 Section 29 of the ICA . . . can be used to arbitrate" controversies regarding liquidated damages
8 before the AAA; "(2) incorrectly applying the doctrine of the case law to allow the request for a
9 declaratory judgment from PRTC," and; (3) "deciding that the request for a declaratory judgment
10 from PRTC was a late request for reconsideration . . ." (Docket No. 16 at iii.) The Board relies on
11 the plain language of the ICA and Puerto Rico Tel. Co. v. WorldNet Telecommunications, Inc., Civil
12 Case No. 11-2263 (JAG) (Docket No. 41) to support its determination that Section 29 can be used
13 to arbitrate liquidated damages controversies. (Docket No. 19-2 at 38-43.)

14 Section 252(e)(2)(A)(ii) permits state commissions to reject provisions of ICAs that
15 contradict public policy, convenience, or necessity. In its order, the Board notes that, under Section
16 252(e)(2)(A), it would have rejected Section 29 when submitted for approval if it violated public
17 policy. (Docket No. 19-2 at 43.) PRTC alleges that the Board arbitrarily and capriciously
18 interpreted Section 29 to create inconsistencies in the arbitration process, thereby violating public
19 policy. (Docket No. 1-1 at 20.) Consequently, a sufficient nexus between the ICA and the Board's
20 order exists. PRTC also claims that the Board "eliminates the alternative to arbitrate...from Section
21 24." The court does not classify this ruling as either a rejection or an interpretation to distinguish
22 whether to automatically grant jurisdiction. Nexus between the agreement and the Board's order
23 exists. Categorizing the Board's disposition as a determination, approval, or rejection ultimately
24 yields the same result: federal jurisdiction exists. The appeal is the product of a purportedly
25 arbitrary and capricious ruling that Section 29 does not violate public policy, pursuant to the Board's
26 interpretation of its discretion under federal law. Consequently, federal jurisdiction exists. See e.g.,

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1 Puerto Rico Tel. Co. v. Puerto Rico Telecomms. Regulatory Bd., 2010 U.S. Dist. LEXIS 83781, at
2 *8-9 (D.P.R. Aug. 13, 2010). Lastly, federal courts have resolved whether state commissions have
3 interpreted ICAs arbitrarily and capriciously. See Puerto Rico Tel. Co. v. T-Mobile - Puerto Rico,
4 LLC, 678 F.3d 49, 65 (1st Cir. 2012).

5 **IV. Consolidation**

6 The court grants the Board's Motion to Consolidate, subject to approval by Judge Garcia-
7 Gregory. (Civil Case No. 11-2263, Docket No. 60.)

8 **V. Conclusion**

9 For the abovementioned reasons, the court **DENIES** Plaintiff's Motion to Remand .
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11 **SO ORDERED.**

12 In San Juan, Puerto Rico this 9th day of October 2012.
13

14 /S/ Gustavo A. Gelpí

15 GUSTAVO A. GELPI

16 United States District Judge
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